

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE EXECUTIVE AND REGULAR SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL
May 7, 2009**

• **CALL TO ORDER**

Mayor Schlum called the Executive Session to order in the Fountain Hills Fountain Conference Room at 4:35 p.m.

AGENDA ITEM #1 – ROLL CALL AND VOTE TO GO INTO EXECUTIVE SESSION.

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Councilmember Leger, Councilmember Hansen, Vice Mayor Archambault and Councilmember Dickey. Town Attorney Andrew McGuire, Town Manager Rick Davis and Town Clerk Bev Bender were also present. (Councilmember Hansen left the meeting at 5:55 p.m.)

VOTE TO GO INTO EXECUTIVE SESSION: (i) PURSUANT TO A.R.S. §38-431.03(A)(1), FOR DISCUSSION OR CONSIDERATION OF EMPLOYMENT, ASSIGNMENT, APPOINTMENT, PROMOTION, DEMOTION, DISMISSAL, SALARIES, DISCIPLINING OR RESIGNATION OF A PUBLIC OFFICER, APPOINTEE OR EMPLOYEE OF ANY PUBLIC BODY (SPECIFICALLY, DISCUSSION OF APPLICANTS RELATING TO THE FOUNTAIN HILLS TOWN COUNCIL APPOINTMENT); AND (ii) PURSUANT TO A.R.S. §38-431.03(A)(4), DISCUSSION OR CONSULTATION WITH THE ATTORNEYS OF THE PUBLIC BODY IN ORDER TO CONSIDER ITS POSITION AND INSTRUCT ITS ATTORNEYS REGARDING THE PUBLIC BODY'S POSITION REGARDING CONTRACTS THAT ARE THE SUBJECT OF NEGOTIATIONS, IN PENDING OR CONTEMPLATED LITIGATION OR IN SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION. (SPECIFICALLY, THE SKLAR V. FOUNTAIN HILLS AND FIREROCK TAX LITIGATION MATTER.)

Councilmember Dickey **MOVED** to go into Executive Session at 4:35 p.m. and Vice Mayor Archambault **SECONDED** the motion, which **CARRIED** unanimously by a vote of those present (6-0).

Councilmember Hansen left the executive session at 5:55 p.m. due to a conflict of interest in discussing the Firerock Tax litigation matter.

AGENDA ITEM #2 - ADJOURN TO REGULAR SESSION

Mayor Schlum adjourned the executive session at 6:07 p.m.

REGULAR SESSION AGENDA

* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Schlum called the meeting to order in the Fountain Hills Council Chambers at 6:30 p.m.

* **INVOCATION - FATHER DAN ROBLING, ANGLICAN CHURCH OF** **ATONEMENT**

* **ROLL CALL**

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Councilmember Leger, Councilmember Hansen, Vice Mayor Archambault and

Councilmember Dickey. Town Manager Rick Davis, Town Attorney Andrew McGuire and Town Clerk Bev Bender were also present.

***MAYOR'S REPORT**

Mayor Schlum announced that item #2 had been removed from the agenda at staff's request.

*** SCHEDULED PUBLIC APPEARANCES**

(Items on the agenda were discussed out of order but for purposes of clarity will remain as listed on the agenda.)

(i) Presentation by 2010 Census representative Al Macias explaining the census process.

Census representative Al Macias addressed the Council and provided a brief overview of the 2010 census process. He explained that the census was a count of everyone residing in the United States. All U.S residents must be counted - people of all races and ethnic groups, both citizens and non-citizens. The U.S. Constitution requires a national census once every ten years and the actual census day was April 1, 2010. He noted that hundreds of regionally based partnership specialists and staff will help with the partnering process and work with local communities to promote the census. Questionnaires will be delivered or mailed in March 2010 and it will be the shortest census questionnaire in history containing ten questions that should take approximately ten minutes to complete. By law, responses cannot be shared with anyone, including other Federal agencies and law enforcement entities. Census information helps determine locations for schools, roads, hospitals, job training, childcare, senior centers, etc. He advised that the one-year out milestone was April 1, 2009 (Census Week) and added that verification of the census address list will take place between April and July of 2009. The 2010 questionnaires will be delivered in March 2010, Census Day is April 1, 2010 and final counts will be delivered to the President on December 31, 2010. Redistricting counts will be delivered to the states between February and March 2011.

Discussion ensued relative to key dates, questionnaire assistance including language assistance and census materials and support (Partnership Program and marketing materials).

Mr. Macias emphasized that the census was quick, safe, and important, and urged people to visit www.2010census.gov for additional information.

(ii) Presentation by Parks and Recreation Director Mark Mayer introducing a bronze sculpture titled "Quackers" being proposed by the Public Art Committee to be paid from the 1% Public Art Fund.

Director of Parks & Recreation Mark Mayer addressed the Council relative to this agenda item and advised that the Public Art Committee was recommending future acceptance of a bronze piece titled "Quackers" for potential placement on the north side of Fountain Park Lake. Mr. Mayer said that the piece was valued at \$4,900, has a negotiated acquisition price of \$3,500 to be paid from the 1% Public Art fund. There was a balance of approximately \$5,300 in the 1% Public Art Fund, which was unencumbered. These funds were available because the Public Art Committee funded the recent purchase of "Blue Spire," rather than the 1% Public Art Fund. The installation of this piece would be done in-house. He noted that the piece was done by Colorado artist Michael Dwyer. Additionally, at the May 21, 2009, Council meeting, staff will be requesting Council's consideration of approving the placement site of this piece as the suggested location was not one of the previously approved sites on the map of Fountain Park. Mayor Schlum thanked Mr. Mayer for his presentation.

(iii) Presentation relating to the pursuit of stimulus funds.

Town Manager Rick Davis addressed the Council relative to this agenda item and stated that the Town, along with other communities throughout the country, had been engaged in qualifying for funds that were made possible through the American Reinvestment and Recovery Act (ARRA). He said that staff had enlisted the

help of several volunteers to help identify possibilities. He noted that the efforts of the Town had been focused primarily in the areas of transportation, public safety, and environmental, and they had been trying to lend support to the School District and the Sanitary District as well. They had also looked at possible grants and funding for economic development.

Mr. Davis stated that with them today they had Katie Decker, the Town's Community Affairs & Media Relations Administrator, Raymond Rees, the Town's Environmental Planner and Randy Roberts, the Assistant Fire Chief, and advised that they would provide a brief overview of this item.

Ms. Decker discussed avenues for obtaining funds and noted that they could pursue funding from the County, the State, and the Federal government. Some of those overlap somewhat depending on the area, particularly in transportation. The three areas that staff had focused on were transportation, the environment, and public safety and this was where they thought there was legitimate opportunity to pursue funds. Under transportation, the Town has received \$1.1 million already, which was going to be used for Shea Boulevard per Council's direction. This was money that was assigned through ADOT but the formula was created by MAG and was done with a \$500,000 base and then population was added to that. She noted that they were also looking to the Federal government in an effort to identify other things that could be done along Shea. She discussed Title 12 funding and said that the parameters for that would be coming out on May 18th (additional funds may become available from that fund).

Mr. Rees discussed the environmental aspect of the funding and stated that he had an opportunity to attend a meeting yesterday with over 300 other people that was put on by SRP and a number of other groups. Throughout the County no funds would be disbursed to any municipalities; most of the stimulus money was going to be done through the State and that would go through the Arizona Department of Commerce Energy Department. Through the DOE's Community Energy Program there was \$5.7 million available in non-matching grants for energy efficiency and conservation projects. These grants were available to cities, towns, and counties that were under 35,000 in population. As far as Federal monies, there was \$450 million in energy grant money and these grants were available to cities, towns, and counties that were under 35,000 in population. These were competing grants and were administered by the U.S. Department of Energy. There was a limit of \$300,000 per project. If there was an intergovernmental project chosen, then the limit was \$350,000. DOE will award those projects ranging from least in cost to the most. A date for the release of the program has not been announced.

Mr. Roberts addressed the Council relative to the Public Safety/Fire Station issue and noted that there were two programs that they were primarily focusing on as far as the Federal grants. The first was the Assistance to Firefighter's grants, a program that would ultimately provide approximately \$510 million to Fire Departments nationwide. The purpose of the award program was to enhance response capabilities and protect the health and safety of the public with respect to fires and other hazards. The grants were specifically targeted at training, conducting first responder health and safety programs, and buying equipment and response vehicles. Chief LaGreca was able to obtain \$40,000 recently to purchase some mobile radios and staff will be applying for funding in the near future for an upgraded generator for Station #1. He discussed another program that provided FEMA with \$210 in grant funding for fire station construction and upgrades. This was a new program and staff did not have many details about it yet so they were paying close attention to what was going on and as soon as they had some more information they would bring it forward. FEMA drafted some guidelines that were currently going through draft review and FEMA planned to announce its guidance package possibly as early as late May. The process was a competitive one and staff was not yet sure of the parameters. The grants were expected to be awarded some between September and December 2009.

Ms. Decker said that they also wanted to take this opportunity to thank their volunteers and stated that they were fortunate to have five people step forward and identify key areas. She noted that they were the people who had done the lion's share of the work - Brian Baker (Environment), Mike Tyler (Economic Development), Larry Moyse (Public Safety) Bob Thompson (Schools) and Jerry Butler (Transportation). Mayor Schlum thanked staff and the volunteers for their hard work in this area.

In response to a question from Councilmember Dickey, Mr. Rees advised that the projects did not have to be "shovel ready" right now but they had to be able to be completed within three years of when the application was submitted. He added that there were things that they would be able to work on such as retrofitting on vehicles, lighting upgrades on public buildings, solar projects, etc. He said that they just need to "get those things rolling" and get the applications in for that.

Ms. Decker also expressed appreciation to Dr. C.T. Wright who has been helping with the School program.

The Mayor noted that many of the guidelines were not yet available and this would be a long process. He added that he was sure that the Town would be successful in obtaining the dollars they needed for projects they would be proud to spend those dollars on.

(iv) Presentation by Pat Walker and Andrew Rheem with Red Oak Consulting regarding the Development Fee Analysis and Report.

Pat Walker and Andrew Rheem, representing Red Oak Consulting, addressed the Council relative to this agenda item and highlighted a PowerPoint presentation (a complete copy of the presentation was available in the office of the Town Clerk). Ms. Walker advised that they had completed a fee study in conjunction with Deputy Town Manager Julie Ghatti, Mary Martin, and all of the department heads. She noted that back on April 28th Ms. Ghatti presented the Council with the study and filed the official Notice of Intent. She explained that that was when the "clock starts" to be able to adopt impact fees. She discussed State Statute requirements relative to the process and said that they also had to have an Infrastructure Improvement Plan, which was also filed with Ms. Ghatti and available for the public to review in person and on the web.

Ms. Ghatti and Mr. Rheem provided an overview of the development fees, discussed Arizona Revised Statutes and development fees, the fee study report and infrastructure improvement plan, demographics and study assumptions, non-utility fees updated (methodologies/fee calculation), recommended fee summary, development fee comparisons, and a proposed schedule for adoption.

Ms. Ghatti stated that a development fee was a one-time charge against new development designed to reflect the proportionate cost of capital facilities to serve new development. Development fees could also be called an investment fee, impact fee, system development charge, capital recovery charge, system expansion fee or capacity fee. She explained the reasons why cities and towns implement development fees (to have growth pay for the demands it placed on capital facilities and infrastructure and said that if development fees were not collected, then service levels could decline or existing residents could wind up paying for capital facilities or infrastructure to support new growth).

Discussion ensued relative to the pertinent State Statutes; an Infrastructure Improvement Plan (IIP) and the reasons behind having one; study deliverables; major assumptions and demographics; existing non-utility development fees updated (residential and non-residential); methodologies; equity buy-in; incremental (a forward looking method used for computing proposed development fees) and hybrid (combines buy-in and incremental method facility costs and was allocated to total existing and new development through build out); key methodological considerations; recommended fees and methodologies by fee area; hybrid method calculation steps/total capital costs; hybrid method calculation/fee per capacity unit; general government fee calculation; law enforcement fee calculation; open space fee calculation; parks and recreation fee calculation; fire and emergency fee calculation; library and museum fee calculation; transportation and how it was calculated, single family residential examples, capacity, and a commercial example; streets fee calculation; existing and recommended fees for both single family residential (per dwelling unit) and multi-family residential (per dwelling unit); existing and recommended fees both commercial per square foot and industrial per square foot; and a survey of non-utility development fees.

Ms. Walker advised that next steps include a public hearing on July 2, 2009, fee and IIP adoption on August 6, 2009, and added that the effective date of the fees would be November 1, 2009. She discussed the following summary and recommendations:

- * Consider proposed fees for adoption
- * Increase fees annually based on 20 City Engineering News Record Construction Cost Index
- * Evaluate capital plans on an annual basis
- * If there were major changes in community development statistics or economic trends, adjust the fees accordingly.

Ms. Ghetti thanked the Council for allowing them the opportunity to address them and indicated their willingness to respond to questions.

Mayor Schlum thanked Ms. Walker and Mr. Rheem for their presentation.

Councilmember Dickey commented on the fact that the presentation illustrated many of the very strict rules that govern the imposition, collection, and use of impact fees. She said that the Legislature passed a budget just through a committee on Tuesday and it was going to include an option that would allow municipalities to replace their General Fund dollars with impact fees and use them as such, General Funds, so that the State could withhold some revenue sharing funds from municipalities. She noted that the League of Cities & Towns had presented this to the City of Scottsdale and she suggested that they may want to ask the League to possibly come to one of Fountain Hills meetings, possibly the next one, because she believed it important to understand the implications should that pass.

Mayor Schlum stated that he heard today that that might have been withdrawn and Ms. Dickey noted that it was included in the bills that passed so they might want to ask for some more information on this.

In response to a question from Councilmember Leger regarding other studies being done in surrounding communities, Ms. Walker advised that Mesa was currently conducting a study but she did not yet have information on that. She said that she would look into the other municipalities with which the Town was being compared and provide any data that was available in the near future.

CALL TO THE PUBLIC

None.

CONSENT AGENDA

1. CONSIDERATION OF APPROVING THE TOWN COUNCIL MEETING MINUTES FROM APRIL 14, 16 AND 21, 2009.

2. CONSIDERATION OF APPROVING A LIQUOR LICENSE APPLICATION SUBMITTED BY FREDERIC CHARLES ZIMMERMAN (FOUNTAIN'S BAR & GRILL) LOCATED AT 13407 N. LA MONTANA DRIVE, FOUNTAIN HILLS. THIS IS FOR A CLASS 12 LIQUOR LICENSE FOR A RESTAURANT.

NOTE: AGENDA ITEM #2, LISTED ABOVE, WAS REMOVED FROM THE CONSENT AGENDA UPON STAFF'S REQUEST.

3. CONSIDERATION OF APPROVING A LIQUOR LICENSE APPLICATION SUBMITTED BY TONY CHANG (KATANA SUSHI AND GRILL) LOCATED AT 16425 EAST PALISADES BOULEVARD, #103, FOUNTAIN HILLS. THIS IS FOR A CLASS 12 LIQUOR LICENSE FOR A RESTAURANT.

Councilmember Leger **MOVED** to approve the Consent Agenda as listed (Items #1 and #3) and Vice Mayor Archambault **SECONDED** the motion.

A roll call vote was taken with the following results:

Councilmember Dickey	Aye
Mayor Schlum	Aye
Councilmember Leger	Aye
Councilmember Hansen	Aye
Councilmember Contino	Aye
Vice Mayor Archambault	Aye

The motion **CARRIED UNANIMOUSLY** (6-0).

REGULAR AGENDA

AGENDA ITEM #4 - CONSIDERATION OF APPOINTING THREE CITIZENS TO THE PARKS AND RECREATION COMMISSION TO FINISH ONE VACATED TERM ENDING DECEMBER 2010, ONE VACATED TERM ENDING DECEMBER 2009 AND A YOUTH COMMISSIONER TERM ENDING DECEMBER 2009.

Mayor Schlum **MOVED** to appoint Natalie Varela to fill the term ending in December 2010, Don Doty to fill the term ending December 2010 and Amy Sanders to fill the Youth term ending December 2009 and Councilmember Leger **SECONDED** the motion.

There were no citizens wishing to speak on this agenda item.

The motion **CARRIED UNANIMOUSLY** (6-0).

Mayor Schlum acknowledged the presence of the appointees in the audience and thanked them for their willingness to serve the Town.

AGENDA ITEM #5 - CONSIDERATION OF RESOLUTION 2009-14, DECLARING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE CHAPTER 22 - PLANNED AREA DEVELOPMENT (PAD) DISTRICT, DATED MAY 7, 2009, A PUBLIC RECORD PURSUANT TO A.R.S. 9-801.

Mayor Schlum advised that one presentation will be given for agenda items 5, 6 and 7.

Senior Planner Bob Rodgers addressed the Council relative to these agenda items and explained that this item was a public hearing for a text amendment to the Zoning Ordinance and said that it would create a new zoning chapter - Chapter 22 - Planned Area Development (PAD) District and would also create a new PAD Zoning District. The Planning & Zoning Commission voted at their September 11, 2008, meeting to initiate this zoning amendment and following the public hearing process the Planning & Zoning Commission voted at their regular meeting of April 9, 2009, to recommend approval of the ordinance. He said that the PAD Zoning District would be different from other zoning districts; it would be a free standing zone that had its own regulations similar to other zoning districts but a PAD could be approved by Town Council to go anywhere in Town if it met the guidelines and development standards. All zoning districts allowed a certain density of development based on the General Plan's land use designations and the PAD District was no different. It would not be reliant on another underlying zoning district for density control; rather the permitted land uses and allowed densities in a PAD were based directly on the General Plan's land use designations. The PAD District would have an approval process in which rezoning and a development plan were considered simultaneously. The development plan would be reviewed and recommended for approval using the review process that included at least one pre-application meeting, the submittal of a project narrative and the submittal of a phasing plan when appropriate.

Following a hearing and recommendation from the Planning & Zoning Commission, the complete proposed package with the rezoning, the development plan, and special conditions, etc. would be forwarded to the Town Council for a hearing and a final decision as part of that rezoning process. This was the same process, virtually unchanged, that was currently required for Town Council approval of rezoning. However, in addition to the amended zoning map, a PAD request would also be accompanied by a specific plan of development and specific stipulations that effectively became the zoning requirements of the site if the Town Council approved the proposal. The PAD District would simplify the review of architectural, landscaping, and other design criteria related to a project's approval, which were currently located in numerous sections throughout the Zoning Ordinance by consolidating all of those requirements and guidelines into one comprehensive site specific and project specific package. PAD approval was entirely discretionary for the Town and was not a "by right" designation. The additional approval criteria for a PAD were more substantial than current underlying district's criteria or even the PUD criteria due to the higher design standards that might be required and the flexibility of design that would be allowed. One major concern has been raised that the PAD sounded like it was good for developers but what benefits would adopting the PAD bestow on the Town? As the Town nears build out, we were facing more challenges on vacant lots as well as the probability of redevelopment in some areas, especially some commercial areas. The PAD ordinance would allow the Town to design developments to provide maximum benefit and provide the best product for the Town's citizens. Projects would not be solely developed and designed by the developers. The PAD would help when dealing with problems of topography or strange lot dimensions by providing for some flexibility in the design. The PAD would allow for better, more site sensitive designs and would create a more strict architectural review process. Any PAD required that 15% of any development be dedicated to open space. Standard zoning works in most situations but standard zoning had strict land use separation and dimensional requirements that might not allow us to go where we want to go. The PAD would allow that flexibility while maintaining the same density restrictions. It was important to remember that the Zoning Ordinance was a tool used to guide the Town towards land use goals that were outlined in the General Plan. The PAD Chapter of the Zoning Ordinance would be one Chapter in that Ordinance and it became another method, one of many at the Town's disposal that could be used in moving the Town towards its General Plan's land use goals. Whether or not the PAD ordinance benefits developers should not be the primary concern; there was no doubt that developers would find benefits in the PAD ordinance, however the primary concern should be whether or not the PAD ordinance benefitted the Town of Fountain Hills and staff believed it would. The Planning and Zoning Commission voted unanimously to recommend the approval because they also believed it would benefit the Town. Some PAD criteria to remember was that a development plan was required for any proposal. Any PAD must conform to the General Plan land use and density regulations. Single-family residential PAD developments must have at least ten acres to even qualify. Mixed use, commercial, and multi-family PAD development must have at least 2.5 acres to qualify. The PAD process essentially combines the concept plan, a plat, a rezoning and a sort of development agreement all into one package that must conform to the General Plan land use and density designations before it would even be considered. Then, during the review process, the Town could apply whatever other criteria or conditions they deemed appropriate. The PAD District would provide for innovative and flexible development with the Town and staff recommended that the Council vote to approve the proposed PAD zoning amendment as presented.

Mayor Schlum thanked Mr. Rodgers for his presentation.

Councilmember Dickey commented on the cities that were listed as having PADs and asked if there was a difference between the terms Charter and General Law as far as being able to adopt this.

Town Attorney Andrew McGuire said that he did not believe that a Charter affected the zoning enabling act; it occupied all of the law on zoning whether you were a Charter city or not. He stated that there had been a misconception for years that Charter cities had the authority for some things as far as zoning that General Law cities and towns did not and advised that most Zoning attorneys in Town did not believe that to be true.

Councilmember Dickey asked if the list was inclusive and noted that Scottsdale and Paradise Valley were not listed. Mr. Rodgers replied that the list was not all inclusive and said staff would look into other municipalities such as the two referred to by Councilmember Dickey.

Councilmember Dickey asked if the proposal had any Prop. 207 ramifications (if something has already been purchased and then the Town puts PAD zoning on it) and Mr. McGuire said just like every other rezoning the Town did in terms of a text amendment had no Prop. 207 issues when it was a new zone like this one. Applying that zoning to a piece of property could create a 207 claim but this would be a voluntary zone and anyone asking for this would sign a 207 waiver.

Discussion ensued relative to the project narrative; the flexibility that this zoning designation allowed; the fact that densities were laid out in the General Plan, not in the Zoning District; the fact that homes could be placed in a "cluster design" and the PAD would require that they provide at least 15% of the project as open space; concerns relative to the fact that if you lived in an area with R1-43 zoning and someone had a 10-acre parcel that they could do a PAD on, the surrounding residents could be looking at something that could consist of 14 or 15 houses where 10 might be the expected number, depending upon how creative they got and the fact that R1-43 would be very low density (one acre or more).

Councilmember Leger expressed the opinion that the Town's current zoning ordinances had served them well and noted that there were very few 10-acre parcels to which this would be applicable. He asked what the advantages of a PAD District were and said that he had concerns for the citizenry and future compatibility. He added that he had attended some P&Z meetings and heard some legitimate concerns raised by people in the community. He said that he would feel more comfortable looking at this five, ten, or fifteen years from now.

Councilmember Dickey referred to #5 and the question "Why do we need this ordinance now?" and cautioned against over-reacting at this time in response to the economic crisis. She stated that she wants to protect the community and not take action that could possibly be done later because they were experiencing what they were experiencing now. She added that if this attracted potential economic development then she would like to know why because perhaps then they were doing something that permits development to occur that might otherwise not be allowed under normal circumstances or at least would scrutinize more during normal times. She stated that added pressure for the Council to say yes and that she still had some reservations.

The Vice Mayor said that he was hearing some "push back" on the residential and he was wondering if the PAD would be more applicable toward commercial to try to help develop those areas. He asked if it would help the downtown. Mr. Rodgers stated that it would provide more options.

Mayor Schlum stated that what he was hearing was R1-6 was medium density, single family according to the General Plan and asked what else was within medium density on the General Plan. Mr. Rogers replied that in the General Plan R1-6, R1-8 and R1-10 were medium density.

Ms. Bender advised that a speaker has submitted a request to speak on this agenda item.

Wendy Riddell addressed the Council and said that she was an attorney and it was her pleasure to speak to them this evening. She indicated her intention to clarify a few of the things that were said about the PAD ordinance. She said that the PAD ordinance enhances the Council's ability to control a project and gives the Council the ultimate say so, which they did not have under the current ordinance - they cannot deny a case today because they might not necessarily like the architecture or the placement of the building. She added that what they were really trying to do was give that control to the Council. She noted that Councilmember Leger made the statement that there was no guarantee that there would be compatibility and said she believes there was a guarantee and that guarantee rests with the Council, with the P&Z Commission, and with Town staff. She pointed out that the proposed ordinance requires developers to "prove up" that they deserved to have some modification of the standards. She said that if they did not like what they "prove up," the Council was not under any obligation to approve it. She added that they would be processed the same as any other zoning case and every neighbor would receive notification as well as every HOA. She stated that there was a substantially greater amount of documentation required under the PAD ordinance than what was required with a typical application. Ms. Riddell added that there was also the public hearing process as well. She indicated her

willingness to respond to questions and noted that the City of Scottsdale does have a PAD ordinance in place but Paradise Valley was a little different.

Councilmember Leger agreed that the proposal gave more authority to the Council and said that perhaps that concerned him because it became more political. He added that when people in this Town purchase a parcel of property, they "do their homework."

Ms. Riddell said that she personally had faith in this Council and many members of the community did as well.

Councilmember Leger stated that he was not talking about this Council but rather Councils in general and he believed when it comes to these types of issues, development in a community, the rules or the zoning districts needed to be clear enough for citizens to understand, particularly when they talk about compatibility and redevelopment of neighborhoods. He expressed the opinion that the proposal did not fit the character of the Town.

Mayor Schlum noted that the Planning and Zoning Commission took a methodical, public, and deliberate approach to this and he credited them with doing so. He said that that was the same approach he would like the Council to take this evening. He pointed out that discussions on this issue began back in September 2006, before the State Trust land was purchased. He agreed that it was a significant change and required a careful and deliberate pace. He added that what the P&Z followed was a good schedule and good questions had been raised to date. He said that at this point he would like to have the Council consider tabling this item to potentially the next meeting or a meeting that would work for staff and those interested. He asked Mr. McGuire, given the structure of the agenda, Items 5, 6 and 7, including a public hearing, if he could simply make a motion to continue those items.

Mr. McGuire explained that the only constraint the Mayor had was with respect to the advertising requirements for the meetings. He said if they wanted to continue the public hearing without having to re-advertise it then they would need to continue to a date specific but if they just made a motion to continue in general, staff would have to re-advertise for the next meeting. He stated that the motion would need to contain a specific date of a Council meeting if they wanted to preserve the previous advertisement notification. Otherwise, a motion to continue would just require that we advertise in the paper.

Mayor Schlum expressed the opinion that it might be better to re-advertise it rather than continue it to a date specific. He said that this would give the Council time to consult with staff and deliberate. He added that based on that staff could decide upon a date that would be appropriate.

Mayor Schlum **MOVED** to continue discussion/action on these agenda items (Items 5, 6 and 7) to a future Council meeting.

Councilmember Leger concurred that the P&Z did an excellent job on the mechanics and moving through the process, looking at public input, etc. He commented on the fact that the process had been ongoing for a significant amount of time and said he was not sure that there was a Councilmember who had not had ample time to speak with staff. He urged the Council to move on these items at the present time and not delay any further.

Councilmember Dickey **SECONDED** the motion.

The Mayor stated that the purpose of the continuance from his perspective was that they were talking about a significant change and he wanted to provide time for more public comment and Council consideration as well.

The Vice Mayor stated that there might be some value here although he was hearing very loudly some of the concerns that his fellow Councilmembers had. He said he believed that some of them could be addressed and whether that made it more restrictive and not as loose as perhaps staff would like it, he thought they needed to

start looking at this and maybe using it as another tool. He advised that he would be taking a hard look at how this zoning would add to the citizens' quality of life and how it would benefit Fountain Hills. He agreed that more research was needed and said that he would support a continuance.

Councilmember Leger discussed a concept to take the PAD and then start taking the ordinance away and putting all of these criteria in there. He added that if they did that they would lose the intent of what the PAD was intended and then what he saw happening was they would start replicating other zoning districts and then come full circle.

Councilmember Dickey also spoke in support of the continuance and said she would expect certain things at the next meeting when this was discussed including why they could not do things that needed to be done (examples of what they could not do now and for which they needed this).

Councilmember Hansen stated the opinion that Councilmember Leger made a compelling argument and said that she was comfortable voting at this point in time. She commented on her preference to do specific things with someone they trusted.

The motion **FAILED** with a 3-3- vote (Councilmembers Contino, Hansen and Leger voting nay).

The Mayor said that they either had to continue discussion on the entire item or move to consider the resolution.

Mayor Schlum stated that with discussion continuing that the issue of Council discretion appeared to be of concern and requested that staff speak to this item and how to address that in relation to what the Council perhaps could not agree to when changing zoning.

Mr. Rodgers advised that there were a number of items that would be looked at as part of the PAD approval process and the Council would have some leeway. He noted that ultimately the entire PAD project had to comply with the General Plan otherwise even Council could not approve it. He added that minor things such as setbacks and lot sizes could be "tweaked" by the Council. He said that generally speaking they would have been "tweaked" before going to Council and Council would receive the total final package. He stated that Council could then "bow to pressure" and approve the project or "tweak" it themselves in other ways they deemed appropriate.

Vice Mayor Archambault asked if all PADs were alike in the various cities and towns that staff researched and Mr. Rogers replied that they all had similar characteristics but they were all slightly different. The Vice Mayor stated that he did not have anything to compare this to; this was a new ordinance for all of them and they had not had an opportunity to review ordinances in other cities and towns. He stated the opinion that that would be beneficial and Mr. Rodgers stated he could provide them to the Council.

The Vice Mayor said he was wondering if they wouldn't be better off "taking baby steps" and looking at a PAD that addressed commercial or mixed use and then expanding on that if they saw some benefit. He expressed the opinion that the Council was feeling that they just did not see the benefit yet.

Mayor Schlum thanked the Vice Mayor for his comments and agreed that there were some pretty broad items in the proposal such as Item J under 22.05.

Mr. McGuire stated that they had not arrived at the public hearing yet; they were still on the resolution.

Councilmember Dickey said that if they came back with something that was different then they could bring back the motion for continuance.

Mr. McGuire advised that staff would endeavor to try and figure exactly what it was that would come back up to meet the request. He said that what they were going to find in terms of PAD ordinances was that they were

exactly what you all were identifying - they were designed to be flexible documents that allowed the Council in many cases to "drill down" on things that they were not allowed to do under the regular zoning ordinance. The PAD was not exclusively a tool of development areas but almost exclusively was that. He said that he was not sure he could tell staff what to provide at this point if they brought it all back.

Vice Mayor Archambault **MOVED** to direct staff to come back to this Council with a PAD unit ordinance that addressed commercial and mixed use.

Mr. McGuire expressed the opinion that a more appropriate motion would be to send it back to P&Z if it was going to be narrowed down to just being commercial and mixed use. He said that was a significant enough change to warrant sending it back to P&Z.

Vice Mayor Archambault **MOVED** to amend the motion to send this PAD development back to Planning and Zoning to change the configuration to look at commercial and mixed use only.

The motion **DIED** for lack of a second.

The Mayor requested that Mr. McGuire explain what a development agreement would allow and what a PAD would allow.

Mr. McGuire stated that a PAD zoning ordinance was a text amendment that puts into place another zoning district much like R1-43, etc. It was required to be amended/implemented just as any other zoning ordinance provision. He said that if the developer wanted to get to a higher level density they would have to rezone it. He noted that the difference between that and a development agreement was that a development agreement was a specific contract between the Town and the developer on a specific project that PAD zoning may be a part of and many times was. He stated that many times they would find that the two documents worked "hand-in-hand" and at other times a development agreement was able to be implemented using straight zoning categories underneath it. The development agreement for the Ellman property right now had all straight zoning categories underneath it and could be built, he believed, under all those categories as they currently existed. He added, however, that they were "very different animals" - one had public hearings/neighborhood meetings required and the P&Z was required to approve it and under a development agreement that was just a contract that the Council approved (between the Council and the development). They accomplished many of the same goals and many times worked together but were completely independent documents. He added that a development agreement was for a term while PAD zoning, if implemented on a piece of property, unless you had some type of termination provisions in it, if within two years there was not site plan approval the PAD could be reverted back. He said that those were going away more now but some still existed. He stated that once in place, if not conditioned upon time, the zoning the Council granted via a PAD was the same as granting R1-43 or R1-35 - it was in place, ran with the land, was a fixed entitlement that if it lasted for 50 years and the development only lasted for ten, the zoning was still there. He stressed that it was hard zoning on the property that just happened to have absolute discretion and flexibility in this body to determine what the elements of that zone were.

Mayor Schlum said that PADs in a number of municipalities were reviewed by staff before bringing this forward and Mr. McGuire noted that Avondale's provision was similar in that it was a hard zoning category rather than an overlay. He stated that Avondale's was probably as flexible as the one being presented.

Councilmember Dickey **MOVED** that Resolution 2009-14 be approved declaring the Town of Fountain Hills Zoning Ordinance - Chapter 22 Planned Area Development (PAD) District, dated May 7, 2009, a public record pursuant to A.R.S. 9-801 and Councilmember Leger **SECONDED** the motion.

Ms. Bender advised that there were no citizens wishing to speak at this time.

Mr. McGuire advised that if the Council did not pass this item, they would not move on to Items #6 and 7.

A roll call vote was taken with the following results:

Councilmember Contino	Nay
Mayor Schlum	Nay
Councilmember Dickey	Nay
Councilmember Hansen	Nay
Vice Mayor Archambault	Nay
Councilmember Leger	Nay

The motion **FAILED** unanimously (0 ayes and 6 nays).

AGENDA ITEM #6 - PUBLIC HEARING REGARDING ORDINANCE 09-03, A TEXT AMENDMENT TO THE ZONING ORDINANCE CREATING A NEW CHAPTER 22 - PLANNED AREA DEVELOPMENT (PAD) DISTRICT. IF ADOPTED, THE AMENDMENT WOULD CREATE THE PAD ZONING DISTRICT AND ASSOCIATED CRITERIA FOR DEVELOPMENT WITHIN THE DISTRICT. CASE #Z2008-06.

This item was not reviewed at this time. See discussion under Agenda Item #5.

AGENDA ITEM #7 - CONSIDERATION OF ORDINANCE 09-03, A TEXT AMENDMENT TO THE ZONING ORDINANCE CREATING A NEW CHAPTER 22 - PLANNED AREA DEVELOPMENT (PAD) DISTRICT. IF ADOPTED, THE AMENDMENT WOULD CREATE THE PAD ZONING DISTRICT AND ASSOCIATED CRITERIA FOR DEVELOPMENT WITHIN THE DISTRICT. CASE #Z2008-06.

This item was not reviewed at this time. See discussion under Agenda Item #5.

AGENDA ITEM #8 - CONSIDERATION OF RENEWING THE PROPOSED CONTRACT BETWEEN THE TOWN OF FOUNTAIN HILLS AND RURAL METRO FOR FIRE AND EMERGENCY SERVICES FOR A FIVE YEAR PERIOD BEGINNING JULY 1, 2009 AND ENDING JUNE 30, 2014, AND THE EXPENDITURE FOR FY 2009-10 IN THE AMOUNT OF \$2,852,368.00 FOR FIRE AND EMERGENCY SERVICES.

Ms. Bender advised that there were no citizens wishing to speak on this agenda item.

The Mayor stated that since there were some items that the Council has not received from Rural Metro so he was seeking a motion to table this agenda item.

Vice Mayor Archambault **MOVED** to table Agenda Item 8 to the Council's May 21st meeting and Councilmember Contino **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (6-0).

AGENDA ITEM #8 - QUARTERLY UPDATE BY THE DIRECTOR OF PLANNING AND ZONING ON ACTIVITIES AND PROJECTS.

Director of Planning & Zoning Richard Turner addressed the Council and provided a brief overview on activities and projects for the quarter. Mr. Turner stated that with regard to the former State Trust land on April 20th the Supreme Court of the State of Arizona let stand an Appellate Court ruling, which upheld a lower Court's finding that referendum petitions filed in the Ellman rezoning and General Plan Amendment case were invalid. That meant that the Council's action on May 15th of last year was a valid action and staff had made the change to the official Town Zoning Map to place that zoning on the books and the General Plan had also been officially amended.

Mr. Turner advised that staff would expect that in the near future the Ellman Companies would present to the Town a master subdivision plat for that property. He said that they had had some previous discussion in that regard. He noted that the ruling re-invigorated staff's efforts with regard to updating the General Plan. He stated that he had met with the firm that was helping staff with that effort and they had put together a new schedule that would help them to move forward at a quicker pace.

Mr. Turner reported that the Council would soon see two changes to the Sign Regulations on their agenda. The first was going to remove the requirement that an A-frame sign be within 20 feet of the front door of the business, which would allow more flexibility. He added that they were still limiting the number of A-frame signs to 1 per business. Also, the other change had to do with allowing larger stores (non-residential buildings) to have larger signs. He advised that this was in response to suggestions from some members of the Board of Adjustment. Staff continued to look at changes to the cut/fill regulations. He reported that Environmental Planner Raymond Rees had been very busy and had held three successful recycling events. Staff also continued to work on trash hauling and recycling. He noted that all of the improvements to the Bashas' shopping center were substantially complete. He provided quarterly data on inspections and discussed "stops." He said that stops could be more than one building inspection.

Discussion ensued relative to Code Enforcement and "green pool" investigations; a new customer response system that has been implemented; the fact that staff completed the Smart Growth Scorecard, staff's educational process of working with businesses on sign regulations, and anticipated resolution to the Hair Hut sign situation.

Mayor Schlum thanked Mr. Turner for his update and all of his staff for their hard work.

AGENDA ITEM #10 - CONSIDERATION OF APPOINTING A NEW TOWN COUNCILMEMBER TO FILL THE VACANCY AND THE POSSIBLE ADMINISTRATION OF THE OATH OF OFFICE BY MUNICIPAL JUDGE TED ARMBRUSTER.

Mayor Schlum announced that the Town's dear friend, former Councilmember Keith McMahan, passed away on St. Patrick's Day of this year, a tragic loss. He said that they have had opportunities to celebrate his life and now it was time to fill his seat for the remainder of his term. The Mayor said that staff has advertised for the position and The Times has been great about running information about the process. He stated that they accepted applications, a Letter of Interest, resumes and Financial Disclosure Statements through a couple of weeks ago and ended up with eight applicants. Mayor Schlum stated that they received a terrific response for the one important position. He briefly outlined the process that was followed and thanked the Town Manager and staff for their efforts in this regard. Mayor Schlum explained that they did not have an opportunity to conduct an election and the Town Code states that, "the Council should appoint."

Ms. Bender advised that there were no citizens wishing to speak on this agenda item.

Mayor Schlum **MOVED** to appoint Dennis Brown to fill the Town Council vacancy for the remainder of their dear friend Keith McMahan's term and Vice Mayor Archambault **SECONDED** the motion.

Councilmember Hansen stated that she had reservations about appointing for a full three-year term and said that she hoped they could proceed fairly quickly on amending the Town Code to read "appointment to the next regularly scheduled election."

Councilmember Dickey commented that it was a pleasure to meet all of the applicants who applied to fill the remaining term and thanked them for their interest in the community.

Mayor Schlum agreed and reiterated appreciation to staff for their efforts throughout the process.

A roll call vote was taken with the following results:

Vice Mayor Archambault	Aye
Councilmember Hansen	Aye
Councilmember Contino	Nay
Councilmember Leger	Aye
Councilmember Dickey	Aye
Mayor Schlum	Aye

The motion **CARRIED** by majority vote (5-1) with Councilmember Contino casting the Nay vote.

Mayor Schlum congratulated Mr. Brown and thanked him for applying and introduced him and his wife Judy. He provided brief background information relative to Mr. Brown. He advised that Municipal Judge Ted Armbruster would administer the Oath of Office to Mr. Brown after the meeting adjourned. He noted that the appointment would become official within 24 hours.

AGENDA ITEM #11 – COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER. ITEMS LISTED BELOW ARE RELATED ONLY TO THE PROPRIETY OF (i) PLACING SUCH ITEMS ON A FUTURE AGENDA FOR ACTION OR (ii) OR DIRECTING STAFF TO CONDUCT FURTHER RESEARCH AND REPORT BACK TO THE COUNCIL:

A. None

AGENDA ITEM #12 – SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE TOWN MANAGER.

The Census, bringing back samples of other municipalities' options on appointment processes and having the League come to give a talk on development fees.

AGENDA ITEM #13 – ADJOURNMENT

Vice Mayor Archambault **MOVED** that the Council adjourn the meeting and Councilmember Leger **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (6-0). The meeting adjourned at 9:01 p.m.

TOWN OF FOUNTAIN HILLS

By _____
Mayor Jay T. Schlum

ATTEST AND
PREPARED BY:

Bevelyn J. Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Executive and Regular Sessions held by the Town Council of Fountain Hills on the 7th day of May 2009. I further certify that the meeting was duly called and that a quorum was present.

DATED this 21st day of May 2009.

Bevelyn J. Bender, Town Clerk